

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

August 23, 1996
AO-96-25

Senator Jane M. Swift
P.O. Box 551
Pittsfield, MA 01202

Re: Campaign event at Massachusetts Museum of Contemporary Art

Dear Senator Swift:

This letter is in response to your August 7, 1996 request for verification that your campaign for U.S. House of Representatives may use the Massachusetts Museum of Contemporary Art (MaMoca) for a campaign event.

You have stated your campaign staff is now in the process of planning your November 5 election night events. As a life-long resident of North Adams, you would like to host a thank you party for your supporters at MaMoca, which is located in North Adams. MaMoca receives funding from the commonwealth. The facility contains an area that is ideal for a celebration and the area is regularly rented for events such as concerts. You intend to pay the appropriate rental fees normally charged for use of the space. You have also stated that the event will not be a fundraiser and I assume that payment will not be required from supporters who will attend.

Question

May your campaign use the MaMoca facility for the event?

Answer

Yes.

Discussion

To the extent the use of space at MaMoca involved the use of public resources for political purposes or the raising of funds in public buildings it would not be consistent with the campaign finance law.

1. Use of public resources

The campaign finance law does not permit appropriated public monies (and governmental resources paid for by such monies) to be used for political purposes. See Anderson v.

City of Boston, 376 Mass. 178 (1978). This office has consistently advised organizations receiving state and federal tax revenue that such organizations are subject to the prohibition, articulated in Anderson, against the use of public funds for political purposes. See AO-89-21 (Massachusetts Municipal Association, which receives financial support from assessments made to member cities and towns, could not use such funds to influence ballot question) and AO-95-41 (Martha's Vineyard Community Services could not use resources to influence ballot question).

The Anderson court stated, however, that the use of public facilities to advocate a particular vote would not be improper, if "each side [is] given equal representation and access." 376 Mass. at 200. I assume that the MaMoca building which you will use for the event is available for rent by MaMoca to other organizations and the general public on the same terms and conditions as are present in your anticipated rental agreement. Therefore, notwithstanding MaMoca's receipt of funds from the commonwealth, the use of the space for the campaign event would not be inconsistent with Anderson.

2. Fundraising in buildings occupied for state, county or municipal purposes

You have stated that the event will not involve fundraising. Section 14 of M.G.L. c. 55 provides that fundraising for political purposes is prohibited in buildings "occupied for municipal purposes."¹ If no fundraising will take place at or in connection with the event, section 14 would not be applicable.

It should be noted that if the commonwealth staffed and operated the museum, we would consider the museum to be a building occupied for state, county or municipal purposes. See AO-94-17 (buildings at municipal golf course are subject to s. 14). A building is not subject to section 14, however, merely because it is owned by an organization which receives funding from the commonwealth. See AO-95-41 (Martha's Vineyard Community Service buildings not subject to section 14 since services provided by the organization are not within the jurisdiction of the commonwealth or its municipalities). This office has also stated that section 14 does not apply to a building owned by a municipality which rents space in the building for private parties, if the building contains no offices or agencies of government. See AO-94-04 (space in Melrose Memorial Hall could be used for political fundraising event).

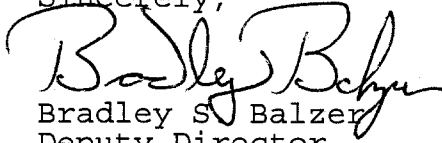
¹ Section 14 is not preempted by the Federal Election Campaign Act and applies to candidates for federal office who campaign in Massachusetts. Such candidates may not use buildings "occupied for [Massachusetts] state, county or municipal purposes" to solicit or receive anything of value for any political purpose. See AO-95-39.]

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This opinion has been rendered solely on the basis of representations made in your letter.

Please do not hesitate to call if you have additional questions regarding campaign finance matters.

Sincerely,



Bradley S. Balzer
Deputy Director

BSB/cp